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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,125	09/15/2003	Shawn P. Wertz	WGH2418	6462
44088	7590	09/14/2005	EXAMINER	
SEAN KAUFHOLD P. O. BOX 89626 SIOUX FALLS, SD 57109				KHAIRA, NAVNEET K
ART UNIT		PAPER NUMBER		
		3754		

DATE MAILED: 09/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/661,125	Applicant(s) WERTZ ET AL.
	Examiner Navneet Sonia Khaira	Art Unit 3754
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>		
Period for Reply		
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.		
<ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). 		
Status		
1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>10 June 2005</u> .		
2a) <input checked="" type="checkbox"/> This action is FINAL . 2b) <input type="checkbox"/> This action is non-final.		
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.		
Disposition of Claims		
4) <input checked="" type="checkbox"/> Claim(s) <u>1-9</u> is/are pending in the application.		
4a) Of the above claim(s) _____ is/are withdrawn from consideration.		
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.		
6) <input checked="" type="checkbox"/> Claim(s) <u>1-9</u> is/are rejected.		
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.		
8) <input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement.		
Application Papers		
9) <input type="checkbox"/> The specification is objected to by the Examiner.		
10) <input type="checkbox"/> The drawing(s) filed on _____ is/are: a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner.		
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).		
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).		
11) <input type="checkbox"/> The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.		
Priority under 35 U.S.C. § 119		
12) <input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).		
a) <input type="checkbox"/> All b) <input type="checkbox"/> Some * c) <input type="checkbox"/> None of:		
1. <input type="checkbox"/> Certified copies of the priority documents have been received.		
2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.		
3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).		
* See the attached detailed Office action for a list of the certified copies not received.		
Attachment(s)		
1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)		
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)		
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>11/21/03, 4/23/03</u> .		
4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.		
5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)		
6) <input type="checkbox"/> Other: _____.		

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejection under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,3,4 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Bishop (US 3,017,056).

Referring to claim 1, Bishop discloses an aerosol can support and actuating device comprising (Col. 1 lines 19-24):

an elongated pole(1) having a bottom end and a top end (Col. 1, line 54), the top end being open, an aperture extending (Col. 1, line 50) into an interior of the pole(1),

a notch (3) extending into the top end such that a lip is defined, the lip (lip is identified in fig 2, the surface extending between the notch and the hook) being spaced from the top end,

the aperture (Fig 2, Col 1, lines 62-65) being positioned nearer the bottom end than the top end;

an elongated tether (11) extending through the aperture (Col 1, lines 62-65) and outwardly (11, Fig 2) through the top end; an attaching member (referred to as support, lines 53-60) being attached to the pole for selectively attaching the aerosol can to the pole when the aerosol can is positioned on the lip (lip is identified in fig 2, the surface extending between the notch and the hook); the tether (11) is removably coupled to an actuator (14) of the aerosol can (C) for selectively dispensing contents of the aerosol (Fig 3, Col 2, lines 69-72, Col 2 lines 1-7).

Referring to claim 3, Bishop further discloses the pole (1) is selectively telescoping (Col 1, line 50) and including a plurality of sections slidably coupled together, the sections being selectively lockable in an extended position (Col 1, lines 50-53).

Referring to claim 4, Bishop further discloses a first end of the tether (11) being positioned adjacent to the aperture (Col 1, lines 62-65), a second end of the tether (11) being positioned adjacent to the top end (Fig 2), a hook (Fig 2, attached at the top end of the tether) being attached to the second end (end on which the can support is attached) of the tether (11) for engaging the actuator (Fig 3, lines 1-10).

Referring to claim 8, a handle (12) is being attached to the bottom end of the pole (1).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop (US 3,017056).

Referring to claim 2, Bishop does not disclose a range of the distance between the lip (lip is identified in fig 2, the surface extending between the notch and the hook) and the top end. It would have been obvious to one in skilled in the art to make the lip as long as necessary depending on how long the tether is and how far away the can is to actuate the apparatus.

5. Claims 5-7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop (US 3,017056) in view of Kisner (US 6,033,560).

Referring to claims 5 and 6, Bishop further discloses a mechanical fastner attaching member (line 54, support) includes a strap (6) for extending around the aerosol can (C), a pin (7) and locking lever (8) that acts as a mechanical fastener being attached to the strap (6) for fastening the strap (Col 1, lines 56-60) around the aerosol can (C) but does not show a hook and loop type mechanical fastener. Kisner teaches to provide a hook and loop fastener in order to attach the aerosol can on the pole easily and efficiently.

It would have been obvious to one having ordinary skill in the art to replace the pin and locking lever type mechanical fastener of Bishop with the hook and loop (11, Fig 1) type mechanical fastener of Kisner in order to attach the aerosol can on the pole in an easier and more efficient manner.

Referring to claim 7, Bishop further discloses a handle (12) is being attached to the bottom end of the pole (1).

Referring to claim 9, Bishop discloses an aerosol can (C) support and actuating device comprising (Col. 1 lines 19-24):

an elongated pole (1) having a bottom end (end on which the handle is attached) and a top end (end on which the can support is attached), an aperture (Col 1, line 50) extending into an interior of the pole(1), a notch (3) extending into the top end such that a lip (lip is identified in fig 2, the surface extending between the notch and the hook) is

defined, the lip being spaced from the top end (Fig 2), Bishop does not disclose a range of the distance between the lip (lip is identified in fig 2, the surface extending between the notch and the hook) and the top end, it would obvious to anyone in skilled are to make the lip as long as necessary to actuate the apparatus, the aperture (Fig 2, Col 1, lines 62-65) being positioned nearer the bottom end than the top end, the pole(1) being selectively telescoping (Col 1, line 50) and including a plurality of sections slidably coupled together, the sections being selectively lockable in an extended position (Col 1, lines 50-53);

an elongated tether (11) extending through the aperture and outwardly through the top end (Fig 2), a first end of the tether being positioned adjacent to the aperture (Col 1, lines 62-65), a second end of the tether (11) being positioned adjacent to the top attached (Fig 2), a hook being attached to the second end of the tether (Fig 2, attached at the top end of the tether),

an attaching member (line 54, support) being attached to the pole (1) for selectively attaching the aerosol can (C) to the pole (1) when the aerosol can (C) is positioned on the lip (lip is identified in fig 2, the surface extending between the notch and the hook), the attaching member (line 54, support) being positioned generally adjacent to the top end (Col 1, line 54), the attaching member (line 54, support) including a strap (6) for extending around the aerosol can (C), a pin (7) and locking lever (8) that acts as a loop fastener being attached to the strap (6) for fastening the strap (Col 1, lines 56-60) around the aerosol can (C). To one skilled in the art, it would

have been obvious to use other means for fastening, a hook instead of a pin for example;

a handle (12) being attached to the bottom end (Col 1, lines 65-67) of the pole (1); and wherein the tether (11) is removably coupled to an actuator (14) of the aerosol can (C) for selectively dispensing contents of the aerosol (Fig 3, Col 2, lines 69-72, Col 2 lines 1-7) substantially according to claim 9, but does not show a hook and loop fastener according to claim 9. Kisner teaches to provide a hook and loop faster in order to attach the aerosol can on the pole easily and efficiently.

It would have been obvious to one having ordinary skill in the art to replace the pin and locking lever type mechanical fastener of Bishop with the hook and loop (11, Fig 1) type mechanical fastener of Kisner in order to attach the aerosol can on the pole in an easier and more efficient manner.

Citation of Related Prior Art

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mercur (US 2,720,422), Mikhail (US 4,969,580), Smrt (US 5,368,202), Casas (US 5,918,565), Troutd (US 6,378,922) also disclosed aerosol can holding and operating devices.

Remarks

7. In response to arguments that the "lip does not define a ledge onto which the bottom of the canister may sit" this limitation is not expressed in the independent claim language which defines the relationship of the notch and lip. The notch and lip feature of Bishop shows that if supporting springs 17 and 9 break, the notch would still sustain the canister in position with support. An alternative purpose of the lip seems to be to support the canister, which Bishop shows as well. Further, prior art showing such an arrangement is expressed by Mercur (US 2, 720,422) which shows a notch w/ lip that hold the bottom of canister incase the supporting means are defeated. It would have been obvious to one of ordinary skill in the art in Bishop's case to run the notch/lip feature through the pole rather than around the pole using pivot pin (4), justifying arguments towards that the notch does not extend into the pole.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Navneet Sonia Khaira whose telephone number is 571-272-7142. The examiner can normally be reached on 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mar Y. Michael can be reached on 571-272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-7142.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Navneet Sonia Khaira
Examiner
Art Unit 3754



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